



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1296

guardianship; proceedings; ward's relationships

Purpose

Requires the court, when appointing a guardian, to follow previous orders of the family court under specified circumstances. Establishes co-guardianships, allows interested parties to petition the court for contact with a ward, and requires notification of certain conditions.

Background

An *incapacitated person* is a person who is impaired by reason of mental illness or deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible personal decisions (A.R.S. § 14-5101). A guardianship is the appointment of an individual to provide care and make personal decisions for an incapacitated person or ward. A party interested in the welfare of an allegedly incapacitated minor who is at least 17 years, six months of age may initiate guardianship proceedings and request that the guardianship order take effect on the minor's 18th birthday (A.R.S. § 14-5301.03)

Notice of a guardianship or conservatorship hearing must be given at least 14 days before the hearing to: 1) the ward; 2) that ward's spouse, parents and adult children or closest relative; 3) if none of those relatives is notified, at least one of the ward's closest adult relatives if any can be found; 4) the person's guardian or conservator or person who has the care and custody of the ward; and 5) anyone who files a demand for notice (A.R.S. § 14-5309).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Family-Court Orders & Co-Guardianships

1. Requires the court, if the guardianship petition is filed before or within two years after the ward's 18th birthday, to appoint:
 - a) the person who had court-ordered sole legal decision-making of the ward when the ward attained 18 years of age; or
 - b) if two persons had joint legal decision-making of the ward when the ward attained 18 years of age, both persons as co-guardians.

2. Exempts the court from the above requirement if the court finds the appointment to be contrary to the ward's best interests.
3. Permits the court to appoint more than one person as co-guardians, in addition to the above circumstance, if the court finds that the appointment is in the ward's best interest.
4. Requires co-guardians to share decision-making for the ward.
5. Specifies that neither co-guardian's rights or responsibilities are superior, except as otherwise ordered by the court.

Petition for a Contact Order

6. Requires guardians to encourage and allow contact between the ward and other persons who have a significant relationship with the ward.
7. Allows a guardian to limit, restrict or prohibit contact between the ward and any person if the guardian reasonably believes that it will be detrimental to the ward's health, safety or welfare.
8. Requires the guardian to consider the wishes of the ward when determining contact if the ward has sufficient mental capacity to make an intelligent choice.
9. Permits a person with a significant relationship with the ward to petition the court for an order compelling the guardian to allow the person to have contact with the ward (contact order).
10. Permits the ward to petition the court for a contact order with a person who has a significant relationship with the ward.
11. Requires the petition to describe:
 - a) the nature of the relationship between the person and the ward; and
 - b) the type and frequency of the contact being requested.
12. Specifies that the person or the ward, as appropriate, has the burden of proving that:
 - a) the person has a significant relationship with the ward; and
 - b) the requested contact is in the ward's best interest.
13. Requires the court to consider, in determining what, if any, contact between the person and the ward is in the ward's best interest, all factors that are relevant to the ward's physical and emotional well-being, including:
 - a) the past and present relationship between the ward and the person;
 - b) the wishes of the ward if the ward has sufficient mental capacity to make an intelligent choice;
 - c) the mental and physical health of the ward and the person;
 - d) whether the person has committed any act involving domestic violence, child abuse, or abuse, neglect or exploitation of a vulnerable adult;

- e) whether the person has abused drugs or alcohol or has been convicted of driving under the influence or a drug offense;
 - f) whether the person is listed in the elder abuse central registry or is required to register as a sex offender; or
 - g) whether the person has been convicted of a violation of false reporting of child abuse, neglect, or vulnerable adult abuse.
14. Presumes, if the petition is filed before or within two years after the ward's 18th birthday, any contact with the ward authorized in the most recent parenting time or visitation order is in the ward's best interest.
15. Allows the presumption to be rebutted by evidence showing that the contact is no longer in the ward's best interests.

Petition to Modify the Contact Order

16. Permits the court-appointed fiduciary or person who has a significant relationship with the ward to petition the court to modify a contact order, if a material change in circumstances affecting the ward's health, safety or welfare (material change in circumstances) has occurred since the last contact order was made.
17. Requires the petition to be supported by an affidavit alleging the change of circumstances.
18. Requires the court to deny the petition unless the court finds that it establishes good cause for a hearing, which must subsequently be set by the court.
19. Requires the petition and hearing notice to be served on all persons as required pursuant to a guardianship proceeding and the ward's court-appointed fiduciary.

Temporary Modification or Suspension of a Contact Order

20. Allows the court-appointed fiduciary or person with a significant relationship with the ward to file a motion asking the court to temporarily modify or suspend a contact order, if a material change in circumstances has occurred since the last contact order was made.
21. Requires the motion to be:
- a) supported by an affidavit alleging the change of circumstances; and
 - b) filed contemporaneously with or after the filing of a petition to modify the prior contact order.
22. Requires the motion to state whether the petitioner requests the prior contact order to be modified or suspended with or without notice to affected persons.
23. Permits the court to temporarily modify or suspend a contact order without notice only if:
- a) it clearly appears from specific facts shown in the motion or affidavit that immediate and irreparable injury, loss or damage likely will result if the order is not issued before the affected persons can be heard in opposition; and

- b) the moving party certifies to the court in writing the efforts, if any, that the party has made to give the notice or the reasons supporting the claim that notice should not be required.
- 24. Requires the court to set a hearing on the motion if the court grants a motion to temporarily modify or suspend a contact order without notice.
- 25. Requires the temporary order granted without notice to state the injury, loss or damage that would have been likely to occur if the order were not issued before giving the affected persons the opportunity to be heard in opposition.
- 26. Requires the temporary order to expire at the date and time set for a hearing on the motion unless otherwise extended by the court for good cause.
- 27. Requires the moving party to personally serve the person whose contact with the ward has been modified or suspended with a copy of the order and notice of the hearing.
- 28. Requires the moving party to have served a copy of the order on any court-appointed fiduciary of the ward and all persons affected by the order as soon as practicable after issuance of the order in the manner prescribed in statute or as otherwise ordered by the court.

Notice of Hospitalization or Death

- 29. Requires the guardian to notify the ward's family members if either of the following occurs:
 - a) the adult ward is admitted to a hospital for a period of not more than three days; or
 - b) the adult ward dies.
- 30. Requires the death notification to include information about any known funeral arrangements and the place of burial.
- 31. Defines *family members* as any person who has filed a demand for notice and the following individuals who are interested parties of the court record:
 - a) the ward's spouse, parents, adult siblings and adult children; or
 - b) if none of the above is found, at least one of the ward's closest living adult relatives that can be found or a person with a significant relationship with the ward.

Miscellaneous

- 32. Requires a parent or nonparent custodian to provide a copy of the most recent court order regarding legal decision-making, parenting time and visitation when petitioning for guardianship.
- 33. Defines *contact* as in-person contact, written communication and all forms of electronic communications.
- 34. Specifies that a *significant relationship* means the person:
 - a) is related to the ward by blood or marriage; or

b) is a close friend of the ward as established by a history of pattern or practice.

35. Defines additional terms.

36. Makes technical and conforming changes.

37. Becomes effective on January 1, 2017.

Amendments Adopted by Committee

- Adds people to the notification list and makes clarifying and conforming changes.

Amendments Adopted by Committee of the Whole

- Extends the hospitalization notification and requires notice only to people who are interested parties on the court record or who have filed demands for notice with the court.

Senate Action

JUD 2/18/16 DPA 7-0-0

Prepared by Senate Research

February 25, 2016

AW/ls/rf